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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940.

KATHERINE C. BRYAN and ST. LOUIS UNION TRUST COMPANY, a Corporation, the Executors of the Will of P. TAYLOR BRYAN, Deceased,
Petitioners,

v.

FRANK C. BALL et al.,
Respondents.

No. 967

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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Textbooks Cited.

Administrative Law—Scope of Judicial Review—Doctrine of the Ben Avon Case—Independent Determination by Court of Both Law and Facts Where Confiscation Question Involved, 39 Michigan Law Review 438 15

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Dickinson, Administrative Justice and the Supremacy of the Law, pp. 39-76, 248-250 15

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13 Fletcher, Cyclopedia of Corporations (Term Ed.), pp. 795, 805, ¶¶ 6377, 6385 21

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PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners, Katherine C. Bryan and St. Louis Union Trust Company, a corporation, executors of the will of P. Taylor Bryan, deceased, respectfully pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Eighth Circuit in this cause.

I.

OPINION OF COURT BELOW.

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit is reported in 116 F. (2d) 950, and appears in the record on pages 151-158. The findings

of fact, conclusions of law and decree of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri are at pages 140-143 of the record.

II.

JURISDICTION.

The judgment of the United States Circuit Court of Appeals was entered January 16, 1941 (R. 158), and petitioners' motion for rehearing (R. 159) was filed January 29, 1941 (R. 173), and was denied on February 14, 1941 (R. 175). Jurisdiction is conferred upon this Court to review this cause by writ of certiorari under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 [U. S. C. A., Title 28, Section 347 (a)].

III.

SUMMARY STATEMENT.

This is a suit in equity to recover $15,000.00 and interest from the estate of P. Taylor Bryan, deceased, by reason of a 100 per cent assessment levied with respect to the shares of the St. Louis Joint Stock Land Bank pursuant to 12 U. S. C. A., Par. 812. The petitioners are the executors of the estate of P. Taylor Bryan, deceased. The suit arose under the laws of the United States, to wit, the Federal Farm Loan Act of July 17, 1916, and the amendments thereto of March 4, 1923 (R. 6), 12 U. S. C. A., Ch. 7. The respondents are cotrustees under a trust agreement between them or their predecessors, constituting a bondholders' protective committee, and certain holders of farm loan bonds issued and assumed by the St. Louis Joint Stock Land Bank (R. 7). The St. Louis Joint Stock Land Bank was declared insolvent on June 1, 1932, and placed in the hands of a receiver (R. 17). The original suit was a general action by the respondents (R. 6) against all persons

claimed to be shareholders of the St. Louis Joint Stock Land Bank, and the District Court, on January 12, 1939 (R. 16), filed its opinion and general findings that the stockholders of the St. Louis Joint Stock Land Bank were liable for a 100 per cent assessment upon the shares of its bank stock held by them. Comprehensive findings of fact and conclusions of law were entered by the District Court (R. 20-49) on January 25, 1939, and an interlocutory decree was thereupon entered fixing the statutory liability for the assessment against certain stockholders (R. 50-56). To this decree, petitioners make no objection here. No judgment was entered against petitioners in the decree of January 25, 1939; on the contrary, the special issues affecting petitioners were specifically reserved (R. 56). The hearing to determine petitioners' liability was later had on September 13, 1939 (R. 63), upon the special defenses of the petitioners as set up in their answer (R. 57-63). In essence, it was the position of petitioners that on June 1, 1932, the day of the appointment of the Receiver for the Bank, and admittedly the controlling date for the purposes of the assessment, the 150 shares of bank stock in question were actually, beneficially and (as a matter of law) of record, owned by one E. D. Nims, a St. Louisan, who at all times was and is amply solvent and financially able to meet the assessment (R. 66, 137); that Bryan was not then the actual, record or beneficial owner of the said shares; that Bryan had, on April 9, 1932, in good faith and for a valuable consideration, sold the 150 shares to Nims, and that at the direction of Nims the shares were transferred out of the name of Bryan (R. 76) into a name designated by Nims; that the transaction was handled by a stockbroker specifically selected by Nims for the purchase of these shares and others. Bryan died in June, 1932, shortly after a receiver was appointed for the Bank (R. 64).

The District Court entered judgment against the peti-

tioners for $15,000.00, the amount of the assessment sought, and interest from February 14, 1939 (R. 143), and the United States Circuit Court of Appeals for the Eighth Circuit affirmed the judgment of the District Court (R. 158).

STATEMENT.

In 1925, Bryan was the owner of 150 shares of the Bank stock. These shares were registered in his name upon the books of the Bank (R. 69) until April 9, 1932, when they were transferred out of his name into the name of the Land Bank Securities Company. In 1930 (R. 27-32) the Bank began to suffer financial difficulties, and Nims and others set about to devise a plan to save the Bank. Nims and his group formed a corporation known as the "Land Bank Securities Company" for this purpose, and stockholders of the Bank were importuned to turn in their Bank shares and receive in lieu thereof an interim receipt for the exchange of Bank stock for class A stock of the Land Bank Securities Company. This exchange was effected through the Franklin-American Trust Company of St. Louis, and for each two shares of bank stock the Trust Company issued its interim receipt for one share of class A stock of the Securities Company. A large number of shares were transferred in this manner, and Nims and his group were thereby enabled to secure the voting control of the Bank. The plan for the exchange of shares was abandoned during the summer of 1931 (R. 38) and was wholly inoperative in April of 1932. Bryan did not participate in the plans of Nims, but held his 150 shares of Bank stock in his own name on the books of the Bank during the period attempts at reorganization were being made. In April of 1932 Nims purchased Bryan's shares through Bruce, a stockbroker, for 25 cents a share, and on April 5, 1932 (R. 106), this transaction was completed (R. 76) by a delivery of the certificates representing the shares endorsed in blank by

Bryan and delivered to the broker, at which time the broker gave his check for the purchase price of the shares. Bruce, the broker, delivered the shares to Nims (R. 106). The certificates were then immediately delivered by the broker to the Bank for transfer, and on April 9, 1932, the shares were transferred on the stock books of the Bank from the name of P. Taylor Bryan to Land Bank Securities Company (R. 69), the name of the transferee having been designated by the broker at the specific order of Nims; Bryan did not participate in the designation of the name of the transferee (R. 90-93). The Bryan certificates were then delivered to the Franklin-American Trust Company, and it, in turn, delivered its interim receipt for seventy-five shares of class A stock of the Land Bank Securities Company. This interim receipt was issued in the name of Bruce, who, at the time, placed a written certification therein that the transfer of such shares to his name was made solely to complete the purchase made by him for his customer, and that he had no interest therein. This certificate (R. 91) was on April 13, 1932, delivered to Nims together with other shares of the Bank which Bruce had acquired for Nims, and Nims gave Bruce his personal check for $89.50 (R. 85), covering the purchase of these shares and others by him, together with the broker's commission. In all steps taken in these transactions, Bruce, the stockbroker, acted in obedience to the specific and prior directions of Nims. On June 1, 1932, a receiver was appointed for the Bank, and thereafter an assessment was declared upon these shares determined by ownership as of June 1, 1932 (R. 38). On June 1, 1932, the name of Bryan nowhere appeared on the stock books of the Bank (R. 69).[1]

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1 Whereas, under the national banking statutes, a transfer within sixty days prior to the closing of the bank (12 U. S. C. A., ¶ 64) does not relieve the transferor making the transfer from the liability, there is no such sixty-day period conjunctive with the statute here applicable, 12 U. S. C. A., ¶812. See *Jeffreys v. O'Neal* (1933, C. C. A. 4), 64 F. (2d) 285, 287, as to effect of 12 U. S. C. A., ¶64, in national bank cases.

The transaction was entered in the personal ledger of Nims (R. 123), showing the purchase of the shares, as personal investments of Nims, and the statement of the stockbroker was made out to the name in which the shares were ordered by Nims to be registered, to wit, "Land Bank Securities Company," and a commission was charged and paid by Nims with his personal check covering the purchase of the Bryan shares in the St. Louis Joint Stock Land Bank.

At the conclusion of the hearing in the District Court, the District Judge observed (R. 137) that "this is a pretty hard case," and that the transfer of the Bryan shares was not in accordance with the plan originally devised by Nims and his associates for the exchange of Joint Stock Land Bank shares for shares of Land Bank Securities Company, and that this was a sale of shares rather than an exchange of shares. The District Court, however, thereafter found for the respondents herein (R. 140-143), and this finding was sustained by the Circuit Court of Appeals for the Eighth Circuit (R. 151-158) upon the findings of the District Court.

UNITED STATES STATUTE INVOLVED.

The statute of controlling importance in this case is Section 16 of the Federal Farm Loan Act, as amended (July 17, 1916, c. 245, ¶ 16; 39 Stat. 374; 12 U. S. C. A., ¶ 812), as follows:

> "Shareholders of every joint-stock land bank organized under this chapter [Chapter 7] shall be held individually responsible, equally and ratably, and not for one another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof in addition to the amount paid in and represented by their shares."

SPECIFICATION OF ERRORS.

The errors which petitioners will urge if the writ of certiorari be granted are that the United States Circuit Court of Appeals erred:

1. In refusing to review the equity suit on the entire record before it and to weigh all the evidence.

2. In refusing to hold that on June 1, 1932, Nims was the actual, beneficial or record owner of the shares.

3. In refusing to hold that prior to June 1, 1932, Bryan had in good faith sold the Bank shares in question for a valuable consideration to Nims, a solvent and financially responsible person.

4. In holding that Bryan transferred his shares to Elbert R. Bruce, an insolvent person.

5. In holding that Bruce never parted with the ownership of the shares prior to June 1, 1932.

6. In refusing to apply or consider the controlling rule of law announced in *Esmar v. Haeussler* (1938, St. Louis [Mo.] Court of Appeals), 115 S. W. (2d) 54,[2] holding that title to stock bought by a broker for a client, whether purchased in the name of the broker or not, vests title to the stock in the client immediately upon the purchase of the shares by the broker.

7. In refusing to hold that the certificate (Defts.' Ex. E, R. 91, 93) delivered by Bruce to Nims established record ownership of the Bank shares in Nims.

8. In refusing to hold that Bryan, prior to June 1, 1932, had parted with the actual and record ownership of the Bank shares, and that such ownership was vested in Nims.

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[2] No other official citation of this opinion of one of the intermediate Courts of Appeals of Missouri.

QUESTIONS PRESENTED.

1.

Shall the United States Circuit Court of Appeals in an appeal in an equity suit, under Rule 52 (a) of the Rules of Civil Procedure, exercise the traditional powers of the chancellor on appeal and function as though the suit were before the court de novo, or shall the Circuit Court of Appeals, on appeals in equity cases, shrink from the difficulties of fact review and abdicate rather than analyze?

2.

Where a stockbroker buys shares at the prior and specific order of his customer and principal to whom he gives notice of such purchase, does not the title and ownership of the shares thereupon vest in such customer and principal?

3.

Where joint-stock land bank shares are purchased by a solvent buyer through a stockbroker, and the shares are thereupon transferred on the books of the bank out of the name of the seller into a name designated by the solvent buyer, does ownership of the shares so purchased thereupon vest in the purchaser?

4.

Shall the transferor of shares of a joint-stock land bank, upon which an assessment is declared, be held liable where the bona fide purchaser is one who is financially responsible, that is, one who is able to respond to any calls or assessments which may be made on the stock (even if it be assumed that the transferor has made the transfer for the purpose of avoiding liability), where the new purchaser has the record title of the shares transferred out of the name of the seller into a name designated by the buyer?

5.

Where, approximately two months prior to the declaration of insolvency of a joint-stock land bank, the owner of shares in such bank sold his shares for a valuable consideration to a person who is and was at all times amply solvent and financially capable of responding to an assessment, the shares being at the time of the sale transferred on the books of the bank out of the name of the former owner into a name designated by the new, actual and solvent purchaser, can the former owner, nevertheless, be held liable for an assessment imposed upon the shares for the benefit of the creditors of the insolvent bank?

6.

Was Bryan, as matter of law, disclosed by the record to be the actual, record, equitable or beneficial owner of the shares of the bank on June 1, 1932?

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1.

The Circuit Court of Appeals sustained the findings of the District Court on the ground that the findings were not "clearly erroneous" (R. 157), and with perfunctory acquittance of its task merely affirmed the findings of the District Court.

This is a suit in equity, and it is clear from the opinion of the Circuit Court of Appeals that it did not review the evidence upon the full record and make or attempt to make such order as the court of first instance ought to have made.

In failing to consider the entire record and review the evidence, the opinion of the Circuit Courts of Appeals is in conflict with the rule of review in equity suits set forth

by this Court in *Keller v. Potomac Company* (1923), 261 U. S. 428. It is also in conflict with the views of Mr. Justice Frankfurter on the subject in *Mayo v. Lakeland Highlands Canning Co.* (1940), 309 U. S. 310, 322.

The question is of the highest importance not only because of the issues involved here, but in order that an authoritative general rule on the form and scope of judicial review under Rule 52 (a) of the Rules of Civil Procedure[3] may be enunciated by this Court for the guidance and control of the Circuit Courts of Appeals in appeals of civil causes formerly known as equity suits.

2.

The ruling of the Court of Appeals to the effect that although Nims purchased the interim receipt for the shares (Defts'. Ex. E, R. 91) he did not actually purchase the shares of the Bank is in conflict upon an important question of law with *Barbour v. Thomas* (1936, C. C. A. 6), 85 F. (2d) 510, and *Munro v. Huber* (1940, C. C. A. 2), 109 F. (2d) 97, 98, which hold that certificates evidencing the deposit of shares upon which an assessment is declared represent shares in the Bank for the purposes of declaring and determining an assessment. Furthermore, the ruling of the Circuit Court of Appeals that Nims may have purchased the shares for the account of Land Bank Securities Company and not for his own account, and upon that premise that the estate of Bryan remained liable for the assessment is in conflict upon an important question of law with the controlling decision of this Court in *Early v. Richardson* (1930), 280 U. S. 496, 499.

3.

That Nims was a person of financial means and capable of responding to the assessment was admitted, and peti-

[3] 28 U. S. C. A., following section 723c.

tioners established the purchase of the shares by Nims. The ruling of the Circuit Court of Appeals that Bryan remained liable for the assessment is in conflict upon a legal question of primary importance with the controlling decision of this Court in *McDonald v. Dewey* (1906), 202 U. S. 510, 527.

4.

The Circuit Court of Appeals, in refusing to consider and give effect to the controlling Missouri decision of the St. Louis Court of Appeals[4] in *Esmar v. Haeussler* (1938), 115 S. W. (2d) 54, 61, holding that title to stock bought by a broker for a client, whether purchased in the name of the broker or the name of the client, immediately vests in the client upon the purchase of the shares by the broker, is in derogation of and in conflict, upon an important question of law, with the recent controlling decision of this Court in *Stoner v. New York Life Insurance Co.* (Dec. 23, 1940), 311 U. S. ..., 61 S. Ct. 336, 85 L. Ed. 275.

DISCUSSION.

1.

The provisions of the Federal Farm Loan Act of July 17, 1916, and the amendments thereto of March 4, 1923, 12 U. S. C. A., Ch. 7 (July 17, 1916, c. 245, ¶1, 39 Stat. 360; Mar. 4, 1923, c. 252, ¶¶ 1, 2, 42 Stat. 1454; Mar. 27, 1933, Ex. Or. 6084), create statutory personal liability of shareholders in joint-stock land banks for the debts and obligations of the bank. In the terms of the statute creating the liability, the provisions are substantially similar to those creating personal liability of shareholders of national banks, 12 U. S. C. A., ¶ 191 (June 30, 1876, c. 156,

[4] That the St. Louis Court of Appeals, like the Kansas City Court of Appeals, is a Missouri intermediate court of appeals of last resort of causes within its jurisdiction is determined in *Stoner v. New York Life Insurance Co., supra.* See, also, Hudson v. Maryland Casualty Co. (1927, C. C. A. 8), 22 F. (2d) 791.

¶ 1, 19 Stat. 63), and 12 U. S. C. A., ¶ 192 (R. S., ¶ 5234; May 15, 1916, c. 121, 39 Stat. 121; Aug. 23, 1935, c. 614, ¶ 339, 49 Stat. 721), except that the creditors and not the receivers are the necessary parties plaintiff in an action to enforce liability imposed by statute upon stockholders of land banks,[5] whereas, under the National Banking Act, the superadded liability is collected at the instance of the Comptroller of the Currency. Here the suit was instituted and prosecuted by so-called trustees under a trust agreement constituting a bondholders' protective committee, and certain holders of farm loan bonds issued and assumed by the St. Louis Joint Stock Land Bank (R. 7). Although the books are replete with actions which seek recovery of assessments on shares of an insolvent national bank, no federal decision is available (except the one in this cause), where a recovery was sought against a transferor of bank shares, when the transferee paid a valuable consideration and took the shares with full knowledge of all of the circumstances and was an amply solvent and legally competent person, and the shares were transferred on the books of the bank. The reason for this entire lack of precedent is apparent. Under the United States statutes the primary responsibility for the institution and prosecution of suits affecting national bank stockholders' liability is upon the receiver appointed by and acting under the direction of the Comptroller of the Currency of the United States, and not, as appears here, upon a self-constituted committee purporting to represent the creditors of the bank (R. 7-8). The Comptroller of the Currency has been and is diligent in seeking recovery where the statute and applicable law permits such recovery. In the light of this observation it is quite clear why no suit has ever been brought or successfully maintained to seek liability under such circumstances as are represented here, since, in cases

[5] Wheeler v. Green (1929), 280 U. S. 49; Christopher v. Brusselback (1938), 302 U. S. 500.

arising under the National Banking Act, suits are instituted at the direction of a responsible officer of the Government, who has no personal interest in or who receives no commission for instituting unjust suits or attempting recovery of assessments not permitted by law.

2.

A question of fundamental importance is presented in this cause, where the Circuit Court of Appeals, in determining the merits of this controversy, failed to review the entire record and evidence in the cause, but, on the contrary, based its decision upon a view that the finding of the District Court was not "clearly erroneous." A Circuit Court of Appeals, under Rule 52 (a) of the Rules of Civil Procedure, is not merely a court of error which considers only questions of law; it continues to act, and should act, as a court of review in all nonjury cases in accordance with the practice which formerly prevailed in equity appeals.[6]

We submit that it remains now to be decided by this Court whether or not the former and accepted rule of review governing Circuit Courts of Appeals in the review of equity cases continues to be the rule of decision. This Court, in enunciating that rule in *Keller v. Potomac Company* (1923), 261 U. S. 428, 444, stated:

> "* * * In that procedure [in equity], an appeal brings up the whole record and the appellate court is authorized to review the evidence and make such order or decree as the court of first instance ought to have made, giving proper weight to the findings on disputed issues of fact which should be accorded to a tribunal which heard the witnesses."

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[6] Moore's Federal Practice, page 3115 et seq.; Simkins, Federal Practice, 3d Ed., page 488; Remarks of Hon. William D. Mitchell, Chairman of the Advisory Committee of the Supreme Court, in note to Rules of Civil Procedure, Annotated Appendix, page 199.

In *Mayo v. Lakeland Highlands Canning Co.* (1940), 309 U. S. 310, 322, Mr. Justice Frankfurter stated:

> "The supervisory power of this Court over the district courts becomes especially appropriate in equity suits. We ought to feel free to apply the traditional powers of the chancellor on appeal to act as though the suit were before him de novo."

It is clear from the opinion (R. 151) that the Circuit Court of Appeals did not apply the traditional powers of the chancellor on appeal to proceed as if the suit were before it de novo, for the opinion of that Court is solely the result of an attempt to elicit some evidence upon which the decree of the District Court might be sustained. The opinion of the Circuit Court of Appeals demonstrates that there was no attempt to review the evidence de novo, or to review the cause upon the entire record.

It is of utmost importance that this Court formulate an authoritative general rule on the form and scope of judicial review under Rule 52 (a) of the Rules of Civil Procedure and determine whether or not the Circuit Courts of Appeals on appeals in equity cases shall shrink from the difficulties of fact review and abdicate rather than analyze. Shall the Circuit Courts of Appeals in such appeals merely administer rather than truly adjudicate causes?

The Circuit Court of Appeals in the suit at bar took and disposed of this cause on appeal in the same manner as though it were engaged in the review of an order of an administrative agency of the Government. It has been the practice of the courts not to substitute their judgment for that of the primary fact triers, where such agencies are, in theory at least, technical experts. Congress has so regarded the Interstate Commerce Commission,[7] the Federal

[7] 49 U. S. C. A., § 11; Tollefson, Judicial Review of the Decisions of the Interstate Commerce Commission, 5 George Washington Law Review 503, 540.

Trade Commission,[8] the Board of Tax Appeals,[9] the United States Shipping Board,[10] the Federal Communications Commission,[11] and the National Labor Relations Board.[12]

It is the general view that the rule of review prevailing in the equity system was continued in force by the new Rules of Civil Procedure in the review of actions formerly known as equity suits (Rules of Civil Procedure, Annotated, Appendix, page 199). But the Circuit Court of Appeals in the suit at bar has departed from this rule. The question to be determined by this Court is of the highest fundamental importance. The rule of review as

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8 15 U. S. C. A., § 41; Hankin, Conclusiveness of The Federal Trade Commission's Finding of Facts, 23 Michigan Law Review 233; Morrison, Judicial Review of the Facts Found by the Federal Trade Commission, 4 Tulane Law Review 638.

9 26 U. S. C. A., § 1100; Helvering v. Kehoe (1940), 309 U. S. 277; Brown, Judicial Review in Taxation, 27 Georgetown Law Journal 37.

10 46 U. S. C. A., § 804; Swayne & Hoyt, Ltd., v. United States (1937), 300 U. S. 297.

11 47 U. S. C. A., § 151; Rochester Telephone Corp. v. United States (1939), 307 U. S. 125.

12 29 U. S. C. A., § 153; National Labor Relations Board v. International Shoe Company (1940, C. C. A. 8), 116 F. (2d) 31; National Labor Relations Board v. Swift & Company (1940, C. C. A. 8), 116 F. (2d) 143; Ward, Proof of "Discrimination" Under the National Labor Relations Act, 7 George Washington Law Review 797; Finality of Fact Under Section 10 (e) of the National Labor Relations Act, 25 Virginia Law Review 368; National Labor Relations Board: Substantial Evidence: Discrimination as to Tenure of Employment, 25 Cornell Law Quarterly 465; Power of the National Labor Relations Board to Order Reinstatement of Company Unions, 36 Michigan Law Review 1131 et seq.; "Substantial" Evidence to Support the Fact Findings of the National Labor Relations Board, 37 Michigan Law Review 665; Judicial Review of Orders of the National Labor Relations Board, 87 University of Pennsylvania Law Review 716.

See also:

Dickinson, Administrative Justice and the Supremacy of the Law, pp. 39-76, 248-250; Judicial Test of Sufficiency of Evidence as Applied to Administrative Process, 8 George Washington Law Review 108; Conclusiveness of Findings of Fact by Federal Commissions, 5 University of Chicago Law Review 495; Warren, An Approach to the Extent of Judicial Supervision Over Administrative Agencies, 28 Georgetown Law Journal 1042; Judicial Review of Administrative Action by Federal Supreme Court, 35 Harvard Law Review 127, 134; Discussion of Current Developments in Administrative Law, 47 Yale Law Journal 515-674; Administrative Law—Scope of Judicial Review—Doctrine of the Ben Avon Case—Independent Determination by Court of Both Law and Facts Where Confiscation Question Involved, 39 Michigan Law Review 438.

provided for under the equity system would have demanded a different result from that obtained in the Circuit Court of Appeals herein.

3.

It has been uniformly held by this Court[13] that the actual owners of the capital stock of a bank upon which an assessment is declared are "those who have their money invested therein," and that such persons, and such persons only, are the shareholders who are liable for the assessment. No transferor of shares upon which an assessment has been declared has ever been held liable by any federal court for the assessment, when he was not the record or beneficial owner at the time the assessment attached and the shares were in fact owned by one who was wholly solvent, amply able to pay the assessment, and who took with full knowledge of all of the circumstances.

It should be noted that on June 1, 1932, a receiver was appointed for the Bank, and thereafter an assessment was declared upon these shares determined by ownership as of June 1, 1932 (R. 38), and that on June 1, 1932, the name of Bryan nowhere appeared on the stock books of the Bank (R. 69).

Where holding companies are set up for the purpose of holding shares in a national bank, other Circuit Courts of Appeals have repeatedly held that the stock certificates or receipts of such holding companies evidencing a deposit of such shares establish actual ownership of the national bank shares for the purpose of the levy of an assessment upon the shares. *Barbour v. Thomas* (1936, C. C. A. 6), 86 F. (2d) 510, and *Munro v. Huber* (1940, C. C. A. 2), 109 F. (2d) 97, 98. Many other decisions of the Circuit Courts

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13 Forrest v. Jack (1935), 294 U. S. 158, 162; Early v. Richardson (1930), 280 U. S. 496, 499; Ohio Valley National Bank v. Hulitt (1907), 204 U. S. 162.

of Appeals might be cited to the same effect,[14] but the Circuit Court of Appeals in the suit at bar held that the transfer of the certificates into the name of the holding company continued ownership of the shares in Bryan, and that the sale and delivery of the bank stock in the form of certificates of the holding company to Nims, admittedly a person of ample means and able to respond to the assessment, did not constitute a valid sale of the shares and did not relieve the original owner of the assessment. In this respect the opinion of the Circuit Court of Appeals is in conflict upon an important question of law with the ruling of the Sixth Circuit and of the Second Circuit, as shown in the two cases to this effect cited.

4.

There is some confusion in the opinion of the Circuit Court of Appeals, in the suit at bar, as to whether or not Nims actually bought the shares for his own account or whether he purchased them for the account of the Land Bank Securities Company. In either event, Nims was responsible for the assessment, as a matter of law. Nims was the president of the Land Bank Securities Company and was wholly advised of and familiar with all of its activities, and Nims was liable for the assessment under either of the following circumstances, because he and he alone was the actual and beneficial owner of the stock.

(a) In the event that Nims purchased the certificates for the account of the Land Bank Securities Company, he was purchasing the shares for an insolvent corporation with no funds of its own to purchase the shares (R. 36), and, so far as the record shows, that corporation had no legal authority to hold the shares. The record shows that

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[14] Corker v. Soper (1931, C. C. A. 5), 53 F. (2d) 190; O'Keefe v. Pearson (1934, C. C. A. 1), 73 F. (2d) 673; Schlever v. Davis (1935, C. C. A. 5), 75 F. (2d) 371; Hanson, Supervisor of Banking, v. Agnew (Wash.), 80 Pac. (2d) 845; Nettles v. Rhett (1938, C. C. A. 4), 94 F. (2d) 42; Laurent v. Anderson (1934, C. C. A. 6), 70 F. (2d) 819.

the Land Bank Securities Company never reimbursed Nims for the money he gave for Bryan's 150 shares of Bank stock or ever committed itself to do so (R. 65). In fact, long before Nims purchased the shares from Bryan, Nims, himself, had already advised all depositors of bank shares and holders of interim receipts of the failure of the plan of reorganization and purpose of the exchange and to come and get their stock. At the time of Nims' purchase of Bryan's stock, the Land Bank Securities Company did not have the means and could not have any lawful purpose in acquiring such purchases (R. 28-36). Under such circumstances Nims, and he alone, would be liable for the assessment under the authority of *Early v. Richardson* (1930), 280 U. S. 496, 498, and many other decisions of this Court and of the United States Circuit Court of Appeals.[15]

In *Early v. Richardson* (1930), 280 U. S. 496, 498, this Court held that as between the seller and the purchaser of national bank shares, the purchaser alone became liable for the assessment, and in so holding stated:

> "When Richardson bought the stock and received the certificates therefor, endorsed by the seller, title passed and the transfer was complete as between the parties. Johnston v. Laflin, 103 U. S. 800, 804, 26 L. Ed. 532, 534. **Thereupon, as between seller and purchaser, the purchaser alone became liable for any assessment thereafter imposed; for, as between them, it would be in disregard of all equitable principles to continue against the seller the burdens of ownership after the purchaser had become entitled to all the benefits including the receipt of dividends.**" (Emphasis ours.)

(b) In the event that Nims purchased the certificate for

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15 Ohio Valley National Bank v. Hullitt (1907), 204 U. S. 162, 169; Barbour v. Thomas (1936, C. C. A. 6), 86 F. (2d) 510; Willing v. Gloucester Inv. Co. et al. (1938, C. C. A. 3), 98 F. (2d) 118.

his own account with his own funds, he was personally liable as the record and beneficial owner of the shares.[16]

It is clear that in either alternative Bryan was not and could not have been the actual and beneficial or record owner of the shares on June 1, 1932, and that, in either of the events set forth herein, Nims was such owner and liable for the assessment.

5.

There are four essential elements which the respondents were by law required to establish before they could recover on the assessments against Bryan's estate. It is essential that each of these elements be proven, and if any one or more of these elements are lacking the respondents' suit must fail. These elements are: (a) That on April 9, 1932, the time the stock was transferred, the Bank was insolvent; (b) that Bryan knew on April 5, 1932, or April 9, 1932, or prior thereto, or ought to have known of such insolvency; (c) that Bryan made the transfer for the purpose of avoiding the statutory double liability; (d) that Nims, the purchaser of the stock, was financially unable to respond to the assessment.

While it may be argued by respondents, with some show of sincerity, that at the time Bryan sold his shares to Nims the Bank was insolvent, and that Bryan then knew or should have known of such insolvency, and that the law will presume Bryan made the transfer for the purpose of avoiding the statutory double liability (although proof of this is wholly lacking), **there can be no doubt that the respondents failed to show affirmatively that Nims was**

16 Forrest v. Jack (1935), 294 U. S. 158; Matteson v. Dent (1899), 176 U. S. 521, 530; Whitney v. Butler (1886), 118 U. S. 655, 660; O'Keefe v. Pearson (1934, C. C. A. 1), 73 F. (2d) 673, 97 A. L. R. 1243; Schlener v. Davis (1935, C. C. A. 5), 75 F. (2d) 371, 373; Young v. Floria (1935, C. C. A., D. C.), 81 F. (2d) 275, 277; Schechter v. Sherwin (1936, C. C. A. 7), 81 F. (2d) 603, 605; Bacon v. Barber (1939), 110 Vt. 280, 6 A. (2d) 9, 123 A. L. R. 253, 257; Munro v. Huber (1940, C. C. A. 2), 109 F. (2d) 97.

financially unable to respond to the assessment. The fourth essential element is wholly lacking in the proof; in fact, it was conceded that Nims was wholly solvent, legally capable of taking the shares and of responding to the liability thereon (R. 66, 137).

The rule[17] has been stated in *Fowler v. Crouse et al.* (1910, C. C. A. 1), 175 Fed. 646, 648, l. c., as follows:

> "* * * it is conceded by the complainant that in order to make out a case against these defendants he must establish these propositions: (1) That at the time the stock was transferred the bank was insolvent; (2) that the defendants then knew or ought to have known of such insolvency; (3) that the defendants made the transfer for the purpose of avoiding the statutory double liability; (4) **that the defendants failed to show affirmatively that the purchaser of the stock was able to respond to the double liability.**" (Emphasis ours.)

The application of this rule wholly disposes of all of the issues here, as a matter of law, for even if Bryan had made the transfer for the purpose of avoiding liability, his estate would not be liable for the assessment levied upon the stock for the reason that the purchaser and actual owner of the stock was a wholly solvent person, and, therefore, no damage could result to the creditors. Had not the solvency of Nims been expressly admitted at the trial, it would have been necessary for the representatives of Bryan to rebut the presumption of insolvency of the purchaser, and if such proof had been established by the representatives of Bryan, it would have been a complete

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17 The rule is set forth in 45 A. L. R. 114:

"If the transfer is to one who is financially responsible, that is, to one who is able to respond to any calls or assessments which may be made on the stock, the creditors of the corporation cannot complain, since their only interest is that some one may remain liable who is financially able to pay their claims; and the transferor, even if he makes the transfer for the purpose of avoiding liability, will not be liable for calls or assessments thereafter made on the stock."

exoneration of the liability sought to be established. This was decided in *McDonald v. Dewey*[18] (1906), 202 U. S. 510, l. c. 527:

> "**The solvency of the vendee, however, is pertinent in showing that no damage could have resulted to the creditors of the bank by the transfer. Though not a necessary part of the plaintiff's case, it may be a complete defense, if it be shown that the sale, however fraudulent, was made to a vendee who was as able to respond to the double liability as was the vendor.** The proposition that the executors are not responsible because the sales were made to solvent vendees, being defensive in its character, the burden of proof was upon them. In this particular the case is not unlike that of an ordinary action upon a contract, where the plaintiff relies upon the contract and the breach, and sues for such damages as may be reasonably supposed to follow therefrom. **But it may be shown in defense that no damages really resulted**; as, for instance, in an action for services, that plaintiff might have obtained other employment at the same wages; or, in an action for a failure to deliver goods, that plaintiff might have gone into the market and purchased other goods at the same price at which the defendant had agreed to sell them. In such case defendant assumes the burden

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18 The same rule is stated in 13 Fletcher, Cyclopedia of Corporations (Perm. Ed.), p. 795, ¶ 6377:

> "So it is held that the transferor is relieved from liability although the transfer was fraudulent, if the transferee is solvent and financially able to respond. But where the transferor seeks to escape liability on the ground that the transferee was financially able to respond, he has the burden of affirmatively showing that fact. And the burden is also on him to show that an insolvent transferee subsequently transferred the stock to a person financially responsible.
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> "• • • if a transfer is made in good faith and to a responsible person, it is none the less effectual to relieve the transferor from liability because it is made for the purpose of escaping liability." (Emphasis ours.)

Further, in 13 Fletcher, Cyclopedia of Corporations (Perm. Ed.), p. 805, ¶ 6385, it is stated:

> "In order to hold the transferor liable, it must appear that the corporation was insolvent at the time of the transfer; that he knew or ought to have known of such insolvency at that time; that he made the transfer for the purpose of avoiding liability, and that the transferee was unable to respond to such liability." (Emphasis ours.)

of proving that no damage in fact resulted. The argument in this case really is that the receiver was bound to show, not only that Dewey was guilty of fraud, but that damages necessarily resulted and that he knew that fact. The reply is that the fraud was consummated by the sale of the stock of a bank known to be insolvent, with intent to evade liability, and that the fraud is not less, though the transferees happened to be solvent, but that their solvency may be proved to rebut the presumption that injury resulted to the creditors from the transfers." (Emphasis ours.)

In *Bowden v. Johnson* (1883), 107 U. S. 251, this Court held[19] that "the transfer must not be to a person known to be irresponsible, and collusively made, with the intent

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19 To the same effect is *Earle v. Carson* (1903), 188 U. S. 42, wherein the Court said (dictum) that in a case involving the double liability of a stockholder of an insolvent national bank, that where the transfer is to a solvent purchaser, no consideration for the creditors of the bank demands that the sale should be forbidden, for between two solvent persons it is of no importance to the creditors on which person the assessment may be levied.

A close analogy appears in *Detroit Trust Co. v. Granger* (1936), 278 Mich. 139, 270 N. W. 239, wherein bank stock upon which there was a double liability was sold on March 20, 1931, when the bank was actually insolvent, at $1.00 per share, through a broker, when the stock prior to the 1929 crash had sold as high as $340.00 a share. The purchaser of the stock at the time of the purchase was unknown to the seller, but it developed that he was at the date of the purchase a person of financial means, though at the time of the institution of the suit he was wholly insolvent. Suit was instituted against the transferor of the shares to collect the assessment, and in denying the right of recovery under such circumstances, the court held, supra, 270 N. W. 241, l. c.:

> "It may be assumed that every holder of trust company stock knew of the statutory liability incident to the ownership of such stock. This, however, would not prevent such holder from making a bona fide sale of the stock to some one else who cared to purchase the stock in the belief that its value would increase. * * *
>
> "Had the stock been transferred to a mere dummy or financially irresponsible person, we would then have to consider whether the sale was bona fide or a mere sham. Such a question is not before us, however, inasmuch as there was no showing that the sale was collusive or that Quisenberry [the purchaser] was insolvent at the time of the transfer * * *. From aught there appears in the record, the sale was made in good faith and in the regular course of the broker's business. The courts have not gone to the extent of holding a stockholder liable, in the absence of statutory provisions, when in good faith he sells his stock in the open market to a responsible purchaser." (Emphasis ours.)

The Michigan courts have consistently followed federal rules in the determination of stock assessment liability. *Fors v. Farrell*, 271 Mich. 358, 260 N. W. 886.

of escaping liability, and defeating the rights given by statute to creditors.''[20]

Here the transfer was not collusive; the transfer was to a solvent person, and the rights of the creditors were not defeated, and, indeed, recovery may yet be had by respondents against Nims.[21]

6.

The Circuit Court of Appeals refused to consider and give effect to the controlling decision of the St. Louis Court of Appeals in *Esmar v. Hauessler* (1938, St. L. [Mo.] Ct. App.), 115 S. W. (2d) 54, 61, which, pointing

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20 The Circuit Court of Appeals in *Cooley v. Armstrong* (1929, C. C. A. 8), 35 Fed. (2d) 401, 402, held:

> "The trial court so clearly stated the law on the subject that we quote therefrom: 'The burden is upon the plaintiff to show before he can recover that at the time Mr. Cooley sold his stock to Fuhr and Craig the bank was insolvent, and in addition to that he must show that Cooley either had knowledge of that fact, or had reasonable knowledge of other facts which would lead a reasonable person to believe that the bank was insolvent. If these facts are established, **Cooley would be liable, unless he shows he made the transfer to people who are solvent.'** " (Emphasis ours.)

21 Respondents may yet bring action and recover against Nims, not being barred by limitation or otherwise. "Since there is no federal statute limiting the liability of stockholders * * * the state statutes of limitation are applicable." Downey v. Palmer (1940, C. C. A. 2), 114 Fed. (2d) 116-117. (Federal courts will permit "action framed as one on a statutory assessment to be converted into one for the recovery of damages based upon fraudulent misrepresentation." Downey v. Palmer, supra.)

Under Missouri statutes action for relief on ground of fraud may be brought within five years after the accrual of the action and such right of action does not accrue until discovery by the aggrieved party at any time within ten years of the facts constituting fraud (Section 1014, R. S. Mo. 1939). Thus the aggrieved party has ten years in which to discover the fraudulent facts and five years after such discovery to take action. Foster v. Petree (1940, St. Louis Court of Appeals) ...., Missouri Appeals ...., 141 S. W. (2d) 131-135.

Upon the record in this case respondents have ten years after 1932 to discover that Nims used Bruce, the stockbroker, in the transactions herein. This time will not expire until 1942. They have until five years after they have made or make discovery to bring their action against Nims. Upon the record in this case respondents were first apprised in 1939 that Bruce acted for Nims. This was set forth in the Amended Answer herein (R. 57-63). Upon these facts, respondents would have until 1944 to sue Nims.

See also Holmberg v. Anchel (S. D. N. Y. 1938), 24 Fed. Supp. 594, where it was held that right of action for joint-stock land bank liability did not accrue, as respects laches, until discovery of nature of corporation used as shield for beneficial owners.

out that it is not customary for brokers in their dealings to divulge the names of their principals, but, rather, to make all purchases and sales in their own names, held that title to stock bought by a broker for a client, whether purchased in his own name or not, vests in the client immediately upon the purchase of the shares by the broker. The refusal of the Circuit Court of Appeals to give effect to this decision was contrary to and in derogation of the controlling opinion of this Court in *Stoner v. New York Life Insurance Co.* (Dec. 23, 1940), 311 U. S. . . , 61 Sup. Ct. 336, 85 L. Ed. 275. Had the Circuit Court of Appeals given effect to this decision, it would have been compelled to hold that title to the shares vested in Nims upon the sale of the shares to him on April 9, 1932, and that Bryan was not the record, actual, equitable or beneficial owner of the shares on June 1, 1932. If it was the purpose of the Circuit Court of Appeals to give effect to what was heretofore known as the general or federal law on this subject, the opinion of the Circuit Court of Appeals is contrary to *Richardson v. Shaw* (1908), 209 U. S. 365, 378, which is to the same effect as the decision in *Esmar v. Haeussler.*

CONCLUSION.

It is submitted that the foregoing discussion and citation of authorities demonstrate that the decision of the Circuit Court of Appeals was erroneous upon legal questions of the highest importance.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Eighth Circuit demanding that court to certify and send to this Court, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled,

"Katherine C. Bryan and St. Louis Union Trust Company, a Corporation, the Executors of the Will of P. Taylor Bryan, Deceased, Appellants, v. Frank C. Ball et al., Appellees, No. 11,782," to the end that this cause may be reviewed and determined by this Court; that the judgment and decree of said Court be set aside and reversed, and that petitioners be granted such other and further relief as to this Honorable Court may seem just and proper.

JESSE McDONALD,
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ARTHUR J. FREUND,
Attorneys for Petitioners, Katherine C. Bryan and St. Louis Union Trust Company, a Corporation, the Executors of the Will of P. Taylor Bryan, Deceased.

Dated at
St. Louis, Missouri,
April 16, 1941.